

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

JUAN HERIBERTO BALLESTEROS (4)

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**CASE NUMBER 6:21-CR-00026-JCB-
JDL**

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On April 29, 2025, the court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Juan Heriberto Ballesteros. The government was represented by Alan Jackson, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by federal public defender Jon Hyatt.

Defendant originally pled guilty to the offense of Possession with Intent to Distribute and Distribution of Less Than 500 Grams of a Mixture of Substance Containing Cocaine, Aiding and Abetting, a Class C felony. This offense carried a statutory maximum imprisonment term of 20 years. The guideline imprisonment range, based on a total offense level of 12 and a criminal history category of III, was 15 to 21 months. On April 25, 2022, pursuant to the court granting a variance based on the First Step Act under the safety valve provisions of 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2, U.S. District Judge J. Campbell Barker of the Eastern District of Texas sentenced Defendant to 12 months imprisonment, followed by a 3-year term of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug aftercare, mental health treatment, and acquisition of a high school equivalency certificate. On

September 7, 2022, Defendant completed his period of imprisonment and began service of the supervision term.

Under the terms of supervised release, Defendant was required to refrain from any unlawful use of a controlled substance. Defendant was also required to submit one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. In its petition, the government alleges that Defendant violated his conditions of supervised release (1) on December 6, 2024; January 3, 2025; January 22, 2025; January 28, 2025; February 7, 2025; February 12, 2025; February 17, 2025; March 5, 2025; and March 13, 2025, when he submitted urine specimens that tested positive for marijuana; and (2) on January 14, 2025, when he admitted to using marijuana on January 10, 2025. The government represented that Fifth Circuit case law has held that illicit drug use constitutes possession.

If the court finds by preponderance of the evidence that Defendant violated conditions of supervision by submitting urine specimens that tested positive for marijuana, admitted to using marijuana, and possessed marijuana as evidenced by his positive drug tests and admission, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon finding of a Grade C violation, the court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of III, the Guideline imprisonment range for a Grade C violation is 5 to 11 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to the Grade C violation of the conditions of supervision referenced above. In exchange, the government recommended to the court a sentence of 5 months imprisonment with 1 year supervised release to follow.

The court therefore **RECOMMENDS** that Defendant's plea of true be accepted and that he be sentenced to a period of 5 months imprisonment with 1 year supervised release to follow. The court further **RECOMMENDS** that Defendant serve his sentence at FCI Texarkana, Texas. The parties waived their right to objections so this matter shall be immediately presented to the District Judge for consideration.

So ORDERED and SIGNED this 30th day of April, 2025.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE